

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6949 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N. MATHUR,

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

RAMESHKUMAR RAMNKL KAPADIA

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Petitioner

MISS HARSHA DEVAQNI, A.G.P., for Respondent No. 1.

MR D.C. DAVE, Advocate, for Respondent No. 2.

CORAM : MR.JUSTICE N.N. MATHUR.

Date of decision: 25/03/96

ORAL JUDGEMENT

Rule. Miss Harsha Devani, learned A.G.P. waives service of notice of rule for the respondent no.1. Mr. D.C. Dave, waives service of notice of rule for the

respondent no.2.

2. The grievance voiced in this Special Civil Application is that Respondent no.2 has not complied with the order dated 24-5-1995 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, directing the District Development Officer, Valsad to issue order to grant N.A. permission for construction of residential house within a period of 30 days from the date of the judgment.

3. Mr. K.A. Patel, District Development Officer, has filed the affidavit. He has stated that on 31-7-1995 he has received the communication dated 26-7-1995 from the Revenue Inspecting Commissioner whereby he was advised to move to the Secretary(Appeals), Revenue Department for reconsideration of the order dated 24-5-1995 as the same appears to have not taken into consideration the facts in their true perspective on the point of health hazard so far as the issue of grant of non-agricultural use permission in respect of the land in question is concerned. It is further stated that in view of the aforesaid directions of the Revenue Inspecting Commissioner. the detailed representation dated 29-7-1995 has been addressed to the Secretary (Appeals), Revenue Department but the same has not yet been disposed of. It is further stated that the order of the Secretary (Appeals), Revenue Department, has not been complied with for the reason that the representation is pending with the Secretary (Appeals), Revenue Department and keeping in view larger public interest i.e. public health.

4. This Court by the order dated 7-3-1996 directed the Secretary (Appeals), Revenue Department, State of Gujarat, to file affidavit with respect to decision of filing representation before the District Development Officer, Valsad.

5. Mr. M.V. Vaidhya, Deputy Secretary (Appeals), Revenue Department, Government of Gujarat, has filed the affidavit, stating that with reference to the letter of the District Development Officer dated 29-7-1995 he has been informed under the communication dated 21-11-1995 that the order dated 24-5-1995 was passed in exercise of revisional power u/s 211 of the Bombay Land Revenue Code after hearing the parties and there is no provision for review of order under Section 211 of the Bombay Land Revenue Code.

6. It is now clear from the affidavit filed by Mr. M.V. Vaidhya, Deputy Secretary (Appeals), that the representation is no more pending before the Secretary (Appeals) Revenue Department, and as such it is obligatory upon the District Development Officer, Valsad to comply with the order of the Secretary (Appeals), Revenue Department dated 24-5-1995.

7. This Special Civil Application is allowed and the respondent no.2 is directed to comply with the order passed by the Secretary (Appeals), Revenue Department, Government of Gujarat, dated 24-5-1995, within a period of four weeks from the date of receipt of writ. It is however, made clear that it will be open for the respondent no.2 or any person to challenge the order of the Secretary (Appeals), Revenue Department, Government of Gujarat. Rule is made absolute, to the aforesaid extent. No order as to cost. D.S. is permitted.

-0-0-0-0-